

MAR 27 2000

BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of)
) MUR 4941
Friends for Harry Reid and)
Clifford R. Beadle, as Treasurer)

GENERAL COUNSEL'S REPORT # 2

I. ACTIONS RECOMMENDED:

Find reason to believe that Friends for Harry Reid and Clifford R. Beadle, as treasurer, violated 2 U.S.C. § 434(a)(6)(A), offer to enter into conciliation with the Respondents prior to a finding of probable cause to believe, and approve the proposed conciliation agreement.

II. BACKGROUND

On October 29, 1999, the Commission found reason to believe that Friends for Harry Reid and its treasurer ("the Committee"), violated 2 U.S.C. §§ 432(b)(1) and (c)(3), 434(b)(3)(A) and (E), 434(b)(2)(G), and 11 C.F.R. §§ 102.8(a), 104.3(a)(3)(vii)(B) and 104.8(a).¹ These findings were premised on the facts as known at the time which indicated that a fundraiser for the Committee had received a \$100,000 personal loan check from the candidate during the 12-Day Pre-General reporting time frame, had delayed forwarding it to the treasurer, and the Committee had failed to timely report the loan.² See First General Counsel's Report dated October 22, 1999 (for RAD Referral 99L-09). In the First General Counsel's Report, this Office also told the Commission that it planned to seek informal discovery limited, in the first instance,

¹ At the time of the Commission's initial findings, Paul Eisenberg was the Committee's treasurer. Clifford R. Beadle has since replaced Mr. Eisenberg as treasurer.

² The RAD referral had referenced communications with the Committee's Vice Treasurer, Janice Miller, who informed RAD that the October 15, 1998 date on the Post-General Report represented the date she had received and deposited the check, but that the fundraiser had received the check before that date, and had not furnished her with the date of receipt.

to a request that the Committee provide us with a copy of the loan check, the date and circumstances under which an identified fundraiser received the check, and an explanation for why the date the check was received was not timely forwarded to the treasurer.

III. DISCUSSION

A. The Investigation

By letter dated November 3, 1999, the reason to believe notification and informal discovery request were sent to Respondents. After sending a follow-up letter, this Office received its first response from counsel for Respondents on December 7, 1999. Following additional correspondence and telephone conversations, counsel provided a copy of the candidate's personal loan check on February 11, 2000 (Attachment 1), and answers to the interrogatories, signed by treasurer Clifford R. Beadle, on February 15, 2000. (Attachment 2.)

The candidate's loan check showed that it was dated, and deposited on, October 15, 1998.³ In response to the first interrogatory, asking for information concerning the fundraiser, Mr. Beadle stated "[t]he fundraising representative who is believed to have received the \$100,000 loan from the candidate is William Marion." The response provided Mr. Marion's occupational information and his most recent home and business addresses and telephone numbers.⁴ The first response additionally stated that "Mr. Marion was a fundraiser for the Friends for Harry Reid Committee ('the Reid Committee') during the 1998 general election." Mr. Beadle confirmed that Mr. Marion "was authorized to receive contributions on behalf of the Reid Committee." (Attachment 2 at 1.)

³ See Attachment 1.

⁴ The interrogatory response stated that Mr. Marion is currently President of Marion Associates Consulting, a public relations consulting firm, in Las Vegas, Nevada.

In response to the second interrogatory, which asked the Committee to explain the circumstances under which the fundraiser received the personal loan check, Mr. Beadle averred that Mr. Marion believed he received the check directly from Senator Reid, but that because of the passage of time, he was uncertain exactly when, or where, he received the check. According to Mr. Beadle, Mr. Marion believed, but was uncertain, that he received the check in Las Vegas, possibly in a hotel or in his office and "[h]e also believes that he received it either on, or a day before, October 15, 1998." (Attachment 2 at 2.)

The final interrogatory requested that the Committee describe in detail the circumstances explaining why the exact date the fund raising representative received the \$100,000 loan check from the candidate, Senator Reid, was not timely forwarded to the treasurer for the Committee. In the Committee's response, Mr. Beadle stated that "Mr. Marion's recollection is that he did forward the check to the Treasurer's Office on a timely basis." He further added, "[h]e believes that he turned the check over to the Treasurer's Office within 24 hours of receiving the check." *Id.*

Two of the interrogatory responses raised further questions. Mr. Beadle's assertions that Mr. Marion received the loan check from the candidate, Senator Reid, on or the day before October 15, 1998 and that the check was turned over to the Treasurer's Office within 24 hours of receipt, seemed to be contrary to the version of events provided to RAD by the Committee's Vice Treasurer, Janice Miller.⁵ Accordingly, on February 17, 2000, this Office requested that Mr. Marion submit a sworn declaration to clarify any discrepancies between his statements and Ms. Miller's statements. On March 3, 2000, this Office received Mr. Marion's sworn declaration. (Attachment 3.)

⁵ See Footnote 2.

In his declaration, Mr. Marion confirmed that during the 1998 general election, he had served as a fundraiser for the Committee. Mr. Marion stated, "[i]t is my best recollection that Senator Reid wrote out a check for \$100,000.00 on October 15, 1998 and gave it to me." *Id.* at 1. Mr. Marion stated that he was uncertain where they were at the time the check was given to him, but thought, however, that they were "either in a hotel at a campaign function or possibly in my office in Las Vegas." *Id.* He further declared that he "then turned over the check to Janice Miller in the Campaign Treasurer's Office," adding that "[i]t is my best recollection that I turned it over almost immediately on October 15, 1998." *Id.* Mr. Marion further stated that he had reviewed Janice Miller's letter to RAD dated July 1, 1999, and her suggestion therein that she and Mr. Marion "had a conversation sometime prior to July 1, 1999 regarding the loan to the Reid Committee."⁶ According to Mr. Marion, however, "I have no recollection of ever discussing this issue with Janice Miller at that time or at any other time." *Id.*

Mr. Marion also addressed the suggestion in Ms. Miller's letter that he "received the check sometime before October 15, 1998 and kept it in my possession for a period of time before turning it over." *Id.* at 2. According to Mr. Marion, "that is not my recollection." *Id.* Instead, he states, "[m]y recollection is that I received it and turned it over on the same day." *Id.* Mr. Marion further states that when he reviewed Ms. Miller's letter, however, it made him question his memory and "[a]s a result, in the Answer to the Interrogatories I stated that it was my recollection that I had received the check on October 15, 1998, but based on Ms. Miller's letter I thought it was possible that I had received it the evening before." *Id.* Mr. Marion

⁶ Ms. Miller's July 1, 1999 letter to RAD stated that she had "checked with our Nevada fund raiser regarding the \$100,000 personal loan from Senator Harry Reid" to the Committee. The letter then goes on to state various facts which, in context, appeared to be derived from her contact with the fundraiser. However, she never mentions Mr. Marion by name and she does not directly attribute any of her statements to him. See First General Counsel's Report, Attachment 7.

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completed his declaration by stating “[m]y best recollection, however, is that I received it on October 15, 1998 and turned it over on that day.” *Id.*⁷

This Office also asked counsel to consult with Senator Reid concerning his recollection of whether he had postdated the loan check. According to counsel, in a telephone conversation with staff of this Office on February 17, 2000, Senator Reid does not believe he postdated the check. With respect to the discrepancies between Ms. Miller’s and Mr. Marion’s statements, counsel advised that Ms. Miller adheres to her statements. Counsel also informed us, however, that Ms. Miller had been ill and had surgery in the period before the General Election, suggesting that those occurrences might have interfered with her recollections.

B. Analysis

While there are discrepancies between Ms. Miller’s and Mr. Marion’s recollections regarding the timing of the receipt of the contribution, this Office does not believe that further investigation would be a good use of the Commission’s limited resources. Mr. Marion’s sworn declaration, in conjunction with the extrinsic evidence that the candidate’s check was dated and deposited on October 15, 1998, supports the conclusion that the check was both received by the Committee, and deposited on, October 15, 1998. Through counsel, this appears to be the Committee’s position. Since the 1998 General Election in Nevada was on November 3, 1998, the check received on October 15, 1998 should have been reported in a 48-Hour Notice, but was first reported on the Committee’s Post General Report.⁸ Therefore, this Office recommends that

⁷ In a telephone conversation with staff from this Office on March 20, 2000, counsel for Respondents advised that, under the procedures followed by the Committee, Mr. Marion should have filed the 48-Hour Notice, but did not, because he was confused as to whether a loan was a contribution. In any event, the ultimate responsibility was that of the treasurer, and no 48-Hour Notice was filed.

⁸ For a legal discussion of the 48 Hour Notice requirements, see the Factual and Legal Analysis. (Attachment 4.)

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the Commission find reason to believe that Friends for Harry Reid and Clifford R. Beadle, as treasurer, violated 2 U.S.C. § 434(a)(6)(A).

IV. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

In addition to the reason to believe recommendation, this Office recommends that the Commission offer to enter into conciliation with the Respondents prior to a finding of probable cause to believe. Counsel for Respondents has requested pre-probable cause conciliation. (Attachment 5.) Attached for the Commission's approval is a proposed conciliation agreement

V. RECOMMENDATIONS

1. Find reason to believe that Friends for Harry Reid and Clifford R. Beadle, as treasurer, violated 2 U.S.C. § 434(a)(6)(A).
2. Enter into conciliation with the Respondents prior to a finding of probable cause to believe.
3. Approve the attached Factual and Legal Analysis.


4. Approve the attached proposed conciliation agreement.

5. Approve the appropriate letter.

Lawrence M. Noble
General Counsel

Date 3/24/00

BY:


Lois G. Lerner
Associate General Counsel

Attachments

1. Personal loan check from Senator Harry Reid to Friends for Harry Reid
2. Answers to Interrogatories
3. Sworn Declaration of William Marion
4. Factual and Legal Analysis
5. Request for pre-probable cause conciliation
6. Proposed Conciliation Agreement

Staff assigned: Jim Moye

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SENATOR HARRY REID 1-87 6383
LANDRA G. REID
1326 KIRBY RD.
MCLEAN, VA 22101

Date 10.15.98

Pay to the Order of frank for Reid \$ 100,000
one hundred thousand only Dollars

SIGNET BANK
ACH RAT 051000778
Arlington, VA 22201

For Loan Theresa Reid

PAY TO THE ORDER OF
BANK OF AMERICA
LAS VEGAS, NV 89103-0601
12240724
FOR DEPOSIT ONLY
FRIENDS FOR HARRY REID
048110456 NV

4022 86673

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CYCLE: 11

U.S. GOVERNMENT
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LAS VEGAS, NV
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FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARY W. DOVE/VENESHE FEREBEE-VINES *VH*
COMMISSION SECRETARY

DATE: MARCH 30, 2000

SUBJECT: MUR 4941 - General Counsel's Report #2
dated March 24, 2000

The above-captioned document was circulated to the Commission
on Monday, March 27, 2000.

Objection(s) have been received from the Commissioner(s) as
indicated by the name(s) checked below:

Commissioner Elliott	<u>XXX</u>
Commissioner Mason	—
Commissioner McDonald	<u>XXX</u>
Commissioner Sandstrom	—
Commissioner Thomas	—
Commissioner Wold	—

This matter will be placed on the meeting agenda for Tuesday,

April 4, 2000. Please notify us who will represent your Division before the
Commission on this matter.

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